



Administrative Tribunal

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LIMITED

AT/DEC/514
23 May 1991

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 514

Case No. 486: MANECK

Against: The United Nations Joint
Staff Pension Board

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Roger Pinto, President; Mr. Jerome Ackerman, Vice-
President; Mr. Ioan Voicu;

Whereas, on 29 August 1988, Arno Maneck, the recipient of a
retirement benefit paid by the United Nations Joint Staff Pension Fund (the
Pension Fund), filed an application that did not fulfil all the formal
requirements of article 7 of the Rules of the Tribunal,

Whereas, on 17 November 1988, the Applicant, after making the
necessary corrections, again filed an application containing the following
pleas:

"Plea:

1. The Tribunal may decide that Article 39 (a and b) of
the Pension Adjustment System, as approved by the General
Assembly in its resolution 42/222 of its 42nd session,
contradicts constitutional principles of the United
Nations, claiming and establishing equal rights for and
equal treatment of all people.

2. The monthly pension of the Applicant of Austrian
Schillings(AS) 30,583.13 should be increased to 41,158.82
by applying a 'floor ratio' exchange of AS 17.63 for one
US-Dollar (...)."

Whereas, on 20 January 1989, the Applicant filed an addendum to his application, asking the Tribunal to "take note of additional evidence and information and additional legal observations".

Whereas the Respondent filed his answer on 5 October 1990,

Whereas the Applicant filed written observations on 7 December 1990,

Whereas, on 1 May 1991, the President of the Tribunal ruled that no oral proceedings would be held in the case,

Whereas the facts in the case are as follows:

The Applicant, a former staff member of the United Nations Educational, Scientific and Cultural Organization (UNESCO) and of the United Nations, separated from service on 31 May 1981 and became entitled to a retirement benefit from the Pension Fund, effective 1 June 1981. On 13 July 1981, the Applicant informed the Pension Fund Secretariat that he was a resident of Austria. Consequently, from 1 June 1981, the Applicant's periodic benefit has been calculated and paid in accordance with the provisions of the two-track Pension Adjustment System which entitled him to receive whichever was the higher of: a U.S. dollar pension adjusted according to the U.S. Consumer Price Index (CPI) (subject since 1986 to a 120% "cap") or a pension calculated in Austrian schillings and adjusted in accordance with the Austrian CPI.

In a letter dated 4 December 1986, to the Secretary of the UN Joint Staff Pension Board (the "Secretary of the Board"), the Applicant questioned the methodology utilized to determine the initial amount of his local currency track pension under the Pension Adjustment System. A lengthy exchange of correspondence on the subject ensued between the Applicant and the Secretary of the Board.

In a letter dated 9 July 1987, the Applicant requested a review by the Standing Committee of the UN Joint Staff Pension Board of his initial local-currency pension, which had been established in accordance with the provisions of the Pension Adjustment System applicable at the time of his separation from service. The Applicant argued essentially that it was inequitable to utilize the 36-month average exchange rate, ending with the month of his separation, to convert his initial dollar pension under the Regulations of the Pension Fund to a local-currency track pension, since a more recent retiree of his acquaintance had received the benefit of a much higher 36-month average exchange rate.

In the final version of his appeal to the Standing Committee, dated 11 April 1988, the Applicant claimed that the interim ("floor") measure introduced into the Pension Adjustment System effective 1 January 1988, for the determination of initial pension amounts on the local-currency track, should be used for the calculation of his pension.

At its 168th meeting, held from 20 to 24 June 1988, the Standing Committee considered the Applicant's appeal of 11 April 1988 and decided to uphold the Secretary of the Board's decision denying the Applicant's request for the re-determination of the local-currency track calculation of his pension. In a letter dated 20 July 1988, the Secretary of the Board informed the Applicant of the Standing Committee's decision.

On 17 November 1988, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant's pension entitlement in the local currency of his country of residence (Austrian schillings) should have been calculated in accordance with the provisions of interim emergency measures which went into effect on 1 January 1988, for participants who separated between 1 July 1987 and 31 October 1990 (paras. 38 and 39 of the United Nations Joint Staff Pension Fund Pension Adjustment System).

2. The present calculation of the Applicant's pension, in comparison with corresponding calculations for more recent retirees, violates the principle of equal rights guaranteed by the United Nations Charter and the Universal Declaration of Human Rights.

Whereas the Respondent's principal contentions are:

1. The Applicant's pension entitlement in local currency was determined in accordance with the Regulations and Rules of the Pension Fund and the provisions of the Pension Adjustment System applicable at the time of his separation from service.

2. The interim measures for adopting the floor value of the pensions of certain later retirees are by their terms not applicable to the Applicant, and the General Assembly was justified in so limiting the applicability of these measures.

The Tribunal, having deliberated from 17 to 23 May 1991, now pronounces the following judgement:

I. The Applicant in this case challenges a decision of the Standing Committee of the United Nations Joint Staff Pension Board (UNJSPB) upholding a decision by the Secretary of the Board to maintain the initial amount of the Applicant's benefit on the Austrian local-currency track, which had been determined in accordance with the provisions of the Pension Adjustment System applicable at the time of his separation from service. There is no dispute that the Applicant has received pension benefits determined in accordance with that System, and in particular paragraph 5(b) thereof. It may be noted that the validity of various aspects of the Pension Adjustment System was recently sustained by the Tribunal in Judgement No. 400, Connolly-Battisti (1987). One of the adjustment features was challenged in that case because it applied to some staff members, but not to others; this feature was upheld by the Tribunal because it was found to have a reasonable basis (see Judgement No. 400, paras. XII-XIV).

II. The Applicant's plea is, in effect, that the amount of his benefit should be determined according to an interim measure for the calculation of the local currency base amounts adopted by the General Assembly on 21 December 1987 and which was made applicable only to the benefits of Pension Fund participants who separated from or died in service during 1987, 1988, 1989 or 1990, with the benefit adjustment payable at the earliest from 1 January 1988. The legal basis asserted by the Applicant for extending this special treatment to him, though he had separated from United Nations service on 31 May 1981 and became entitled to a retirement benefit effective 1 June 1981, is that unless it is applied to him, the interim measure violates constitutional principles of the United Nations establishing equal rights for and equal treatment of all people.

III. In practical terms, the Applicant's dissatisfaction with the amount of his pension benefit stems from the fact that the dollar exchange rate of the Austrian schilling has been on the decline since 1985 and, as a result, the real value of his pension benefit has declined. He points out that

retirees who retired later than he did are in a significantly better position than he because of the manner in which the Austrian schilling exchange rate fluctuated against the U.S. dollar. Hence, he asks that his monthly pension be increased by applying a "floor ratio" exchange of Austrian schilling 17.63 per dollar for re-determining his initial pension.

IV. The jurisdiction of the Tribunal with respect to cases involving the UNJSPB applies to applications alleging non-observance of the Regulations and Rules of the Pension Fund arising out of a decision of the Pension Board. The Tribunal is not empowered to rewrite existing regulations or to create new regulations for the Pension Fund. That is the function of the General Assembly. To the extent that the Applicant seeks such relief from the Tribunal on grounds deemed by him to be equitable in nature, it is plain that his application must fail. The Tribunal likewise has no authority to extend to the Applicant an interim measure adopted by the General Assembly which simply does not apply to him. This again is a matter for the General Assembly's legislative authority.

V. To the extent that the Applicant asserts that the General Assembly acted in violation of the Charter or other human rights principles when it decided to limit the application of the interim measure to participants who separated from service during 1987, 1988, 1989 and 1990, the Applicant's contention is without merit. As explained by the Respondent, the interim measure:

"was intended to address the problem of declining initial local-currency pensions due to reduced and/or frozen scales of pensionable remuneration for participants in the Professional and higher categories and the declining value of the U.S. dollar against certain currencies, i.e., staying in service longer would yield a lower local-currency pension. However, during the Applicant's service, the scale of pensionable remuneration for such staff was steadily increasing, in his own case, his pensionable remuneration in U.S. dollars increased from US\$50,208 on 1 June 1976 to US\$78,676 on 1 January 1981." (Emphasis in original)

The General Assembly, therefore, did not act arbitrarily. It had a rational basis for the interim measure. It was aimed at protecting against what it

saw as a wrongful erosion of the economic position of the retired staff members to whom it applied. Thus, a rational basis existed for the manner in which the interim measure was limited. Without question, such action by the General Assembly does not contravene any principle of the Charter.

VI. The Tribunal recalls and reaffirms its decision in Connolly-Battisti in which, inter alia, the Tribunal discussed the role of the General Assembly in developing and making changes in a Pension Adjustment System. The Tribunal pointed out that modifications in the Pension Adjustment System "must not be arbitrary. They must be reasonable and must be adapted to the aim of the system: adjustment of pensions to cost-of-living changes in the various countries of residence of the retired staff members" (para. XI, quoting Judgements No. 378 (XXXI) and No. 379 (XXX)). These quoted words are relevant as a general principle and the General Assembly's action in establishing and limiting the interim measure here at issue is not in conflict with them.

VII. In view of the foregoing, the denial of the Applicant's request for a "floor ratio" similar to that provided in the interim measure did not in any way violate any of the Applicant's rights under any applicable document or principle. Nor did the Applicant receive unequal or unlawful discriminatory treatment in any respect.

VIII. Accordingly, the application is rejected in its entirety.

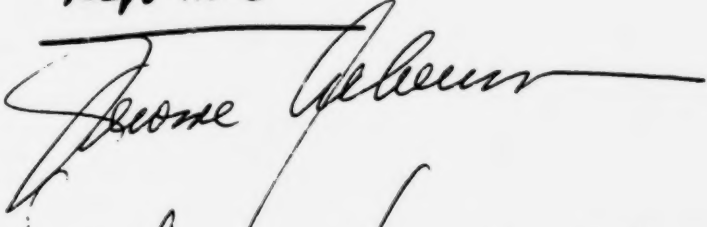
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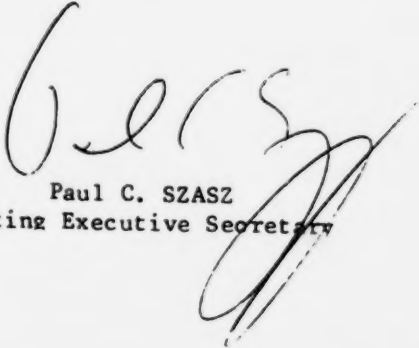
Roger PINTO
President

Jerome ACKERMAN
Vice-President

Ioan VOICU
Member

Geneva, 23 May 1991


Paul C. SZASZ
Acting Executive Secretary